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Supreme Court, U.S.
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**In The**

**Supreme Court of the United States**

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DARRYL KINNEY

Petitioner

v.

HAMILTON PARTNERS

Respondent

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On Petition For Writ Of Certiorari
To The Seventh Circuit Court of Appeals

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

" Whether the Supreme Courts recently held that under the current language of Title VII.... A plaintiff may be entitlted to a mixed motive jury instruction without presenting direct evidence of discrimination if he or she shows that discrimination was a "motivating factor" in the adverse employment decision. See Desert Palace, Inc. v. Costa, 123S.Ct. 2148, 2155(2003)704(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1)And 2000e-3(a).4 The former section generally prohibits racial discrimination against applicants or employees for attempting to protest or correct allegedly discriminatory conditions of employment. (411 U.S. 792,797)"

In Federal court the rules must be followed as to evidence as in the Illinois Court cases of R. Kelly and Mosely, Delion Richards also involving R.Kelly where video and tape evidence is being used and we must give the same respect towards evidence to not so high profile cases because rights are afforded to all in this system of justice. See Rule 329 Amendment of Record on Appeal. Whether judging a case just because is lawful and not wanting to use the evidence because the defendant is a high profile company with a large law firm defending them with obvious favors being paid. The unemployment referee found that Kinney did not

quit his job and Rick Staback told him I was fired for job performance not what he is now telling as his story.(App. E 101-103,120-123a)Whether being the only African American ever hired in over 20 years of business can have all rights violated to keep customers. All evidence proofs beyond any doubt every claim made by the plaintiff, Depositions and transcript of tape recorded confession and documents.(App. D 68a-98a , App. E 99a-107a)A tort agreement was entered into before I ever began working for Hamilton Partners Ray Feacteu Dept. Manager, Hamilton Partners Rick Staback broke it and then fired Plaintiff Darryl Kinney while he was off work under doctors orders from stress created by the employment at Hamilton Partners.(App. E 108a-123a) Plaintiff was not able to add evidence that the court knew existed or supplement record with evidence, per rule329.

Committee Comments

(Revised May 1982)

"This rule is a comprehensive provision covering amendment of the record on appeal, correction of improper authentication, and the settling of any questions concerning whether the record conforms to the truth. It contains portions of former Rules 36(3) and (4). Under this sweeping provision, it will be possible to supply omissions, correct inaccuracies or improper authentication, or settle any controversy as to whether the record on appeal accurately discloses what occurred at the trial by the procedure that will most appropriately solve the particular problem. In view of the liberal terms of this paragraph, the rather elaborate provisions of former Rule 36(4), requiring that a claim as to improper authentication be raised by motion before or at the time of the filing of the brief of the party making the claim, were eliminated as no longer necessary. Unless there is some real prejudice involved, there will be no incentive for claiming improper authentication. Rule 329 was amended in 1982 to permit a single Rule 313. "

Don Jordan called me numerous times after he was let go from Hamilton Partners and also paged me I answer but recorded the calls because of his involvement in the retaliatory actions of Hamilton Partners, this tape has not been allowed or listened to and a judgment placed against me, in order to protect a large company well the taped

confession states all that occurred including the lying write ups I received the fleecing of Hamilton Partners customers and the threatening attitude towards my coworkers preventing them from outright speaking, but all of this meant nothing even the depositions of Nancy Luncht, Mike Burback and Len Wasilewski that backed my side and still no justice. I told lower court Judge George Lindberg of the fraud done by Attorney James Convery in the deposition of myself still nothing, his conduct should also warrant investigation. I have not been able to get a copy of my deposition because of what it has in it the reporter Mr. Convery hired told me she wrote the complaint of me seeing the bait and switch of documents in the deposition and she was prevented from showing up for my deposition of her, I also told this to the judge still nothing. I beg for justice and hopefully I will finally receive it. Whether it was proper for the district court to grant a summary judgment to the defendants where plaintiff alleged' wrongful discharge, retaliation and Defamation,

Invasion of privacy, defendants lacked any real reasons for The acts that took place. Whether it was proper for the district court to grant a summary judgment to the defendants without addressing plaintiffs claims of fraud and obstruction by there Attorney, in the documents they used as evidence and the full Deposition of Plaintiff by Defendants court reporter.

## PARTIES TO THE PROCEEDINGS

The parties to proceedings in the United States Court of Appeals for the Seventh Circuit were petitioner Darryl Kinney and the respondents Hamilton Partners.

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No.05-

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On Petition For Writ Of Certiorari
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PETITION FOR WRIT OF CERTIORARI

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Darryl Kinney on his own behalf petitions for a writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

**OPINIONS BELOW**

The opinion of the court of appeals(App,A)is denied. Lower court granted defendants motion for Summary Judgment.( App. B)both Unpublished.

## JURISDICTION

The judgment of the court of appeals was entered on November 3, 2004. A petition for rehearing was denied on November 3, 2004(App. A, 2 )The jurisdiction of this court rest on 28 U.S.C. 1254(1).

## STATUTORY PROVISIONS INVOLVED

"The civil rights act of 1991: provides monetary damages in cases of intentional employment discrimination. Section 4(h) of the Illinois workers compensation act provides," it shall be unlawful for any employer to coerce or discriminate against, harass, refuse to rehire or threaten to fire or force to resign any worker in retaliation for filing a workers compensation claim, should your employer fire or in some other manner forces you to quit, you have the right to file what is known as a retaliatory discharge lawsuit."

Recovery of punitive damages is governed by Civil code section 3294,which was amended to define" malice, fraud or oppression" as despicable" conduct carried on with a conscious awareness that it will violate the plaintiff's rights. The procedural hurdles section 3294 raises to the recovery of punitive damages apply in wrongful discharge/ public policy cases, as well as in independent tort cases. As noted by the court of appeals:

One who intentionally intrudes, physically or otherwise, upon the Solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for intrusion of privacy, if the intrusion would be highly offensive to a reasonable person accept all of the allegations as true. Liablity only attaches when the :intrusion is substantial and would be highly offensive to the ordinary reasonable person." Borse,963 F.2d at 621

The are statutes that entitle plaintiff to compensation for Retaliatory, Tort and Discrimination. 411F.2d at 1005417 U.S. at 550Id. At 554"

Id. at 768

428 F. Supp. 763(C.D. Cal. 1977

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42 § 2000e-3(a)

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§ 2.10 Retaliation under Title VII

## STATEMENT OF THE CASE

" In the absence of an agreement to the contrary, an employee maybe terminated at-will, that is, for any reason or for no reason at all. (Foley v. Interactive Data Corp. (1988) 47 Cal.3d 654,665.) An employer may not, however, fire an employee for a reason which violates public policy, "since otherwise the threat of discharge could be used to coerce employees into committing crimes, concealing wrongdoing, or taking other action harmful to the public weal." (Ibid.; see also, Tameny v. Atlantic Richfield (1980) 27 Cal.3d 167, 178 [employee terminated for refusing to engage in price-fixing]; Petermann v. International Brotherhood of Teamsters (1959) 174 Cal.App.2d 184, 188 [employee terminated for refusing to commit perjury].)

A claim may be dismissed under Fed.R.Civ.P. 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle him to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the Complaint and The Court of Appeals in *Borse*, observed that one of the torts which Pennsylvania recognizes as encompassing an action for invasion of privacy is the tort of "intrusion upon seclusion." As noted by the Court of Appeals, the Restatement (Second) of Torts defines the tort as follows:

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person accept all of the allegations as true.

Liability only attaches when the "intrusion is substantial and would be highly offensive to the 'ordinary reasonable person.'" *Borse*, 963 F.2d at 621.

*Gantt v. Sentry Insurance*, 824 P.2d 680 (1992) The employee bringing a charge of the tort for wrongful termination in violation of public policy can only use a constitution or a statute as public policy.

"Rule 329. Amendment of Record on Appeal .The record on appeal shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by this rule. Material omissions or inaccuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing
court, or by the reviewing court or a judge thereof. Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth. If the record is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant. If necessary, a supplemental record may be certified and transmitted."

After making a complaint against one of Hamilton Partners customers I was retaliated against by Hamilton Partners thru made up write ups and harassment from management until I was fired while off work sick excused by a doctor and put on medication when I was told to come to work to talk about it with Asset manager Rick Staback who

gave me no opportunity to go back to work but threatened me with stopping me from receiving unemployment and telling my fututre employers that I did not know my job and never before or after have I ever been told I did not know my job or what I was doing, and the write ups were made up, which is supported from Don Jordan taped confession.(App. D,68a-98a )as well as the date they put on the severance agreement that I was under doctor ordered medication and did not react in my usual behavior , it was Ativan,(App. E,110a-115a) (Smith v. Anchor Bldg. Corp., 536 F.2d 231(8th Cir. 1976) a mind altering drug, in which no decisions should be made. And they did not give me a copy of the agreement so I only learned what it said after it was entered in court, had I had all of my mental faculties I would have handled this situation differently.

I had cameras placed over my desk and in my work area and only mine by Rick Staback a violation of privacy.(App. E,101a-103a) Borse, 963 F.2d at 621. And in a my

depositions of Mike Burback and Len Wasilewski the Defendant Hamilton Partners attorney told them that there was no protection for them to speak up while I tried to inform them of the whistle blower laws. The tape no judge wanted to hear to give me the proper judgment is attached of Don Jordan previous maintenance manager that he speaks of the crimes against myself and Hamilton Partners customers.(App. D,72a-75a) 25 pages and the recording I cant say read one page the whole transcript paints the whole picture. Complete Transcipts of Mike Burback, Rick Staback, Len Wasilewski and Nancy Luncht will be sent if writ is accepted with briefs.

## REASONS FOR GRANTING THE PETITION

The decision of the Seventh Circuit is entered without using any evidence to decide my case and after filing for a petition to rehear voted to continue to violate the law and rights of Darryl Kinney. And once the evidence is hear and used towards justice in this case the judgment by law must be reversed and places in the Plaintiff Darryl Kinney the only one with evidence to prove his case, and the Judges Did not give me a day in court and said they ruled from my brief and in my rehear petition I stated this was impossible since my brief stated evidence that verified my facts and Plaintiff is to be taken as fact until; disproved and they did not go the right of law. And that fact is stranger than fiction, and I was filing with the Illinois Supreme court for Supervisory and decided to stop that action and go to the highest court in the land so the favors game can no longer be played.(App .C , 48a-67a) Darryl Kinney is an

African American and is entitled to

protection being a member of a protected class.

## CONCLUSION

The petition for a writ of certiorari should be granted, and this case should be judged on evidence.

Respectfully submitted.

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February 19, 2005